HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.256 OF 1994

Between:

The Executive Officer,
T.T.Devasthanams, Tirupati

. . .Appellant

AND

G.Ganamma and others

. . .Respondents

:: JUDGMENT ::

Counsel for the petitioner : Shri A.K.Jayaprakash

Counsel for the respondents : Shri V.Jagapathi

20th July, 2007

PER G.S.SINGHVI, CJ

This appeal by the Executive Officer, Tirumala Tirupati Devasthanams (TTDs), Tirupati, Chittoor, is directed against order dated 21.06.1993 passed by the learned Single Judge in Writ Petition No.7373 of 1992, whereby he directed the appellant herein to promote the writ petitioners (the respondents herein) to the posts of Nurse with effect from the date of admission of the writ petition i.e. 18.06.1992.

The respondents' claim for promotion to the posts of Nurse was founded on the premise that no qualification had been prescribed for promotion of Auxiliary Nurse-Midwife to the post of Nurse under TTDs Office Holders And Servants (Other Than Hereditary Office Holders) Recruitment Rules, 1978 and even though the requirement of possessing certificate in General Nursing Training of two years duration issued by an institution recommended by State Government and service of five years came to be prescribed under TTDs Employees Service Rules, 1989 (for short 'the 1989 Rules), in view of Rule 16 of those Rules, the non-petitioner (the appellant herein) is duty-bound to promote them despite the fact that they do not possess the qualifications prescribed under the 1989 Rules for promotion of Auxiliary Nurse-Midwife to the post of Nurse.

In the counter filed on behalf of the appellant, it was pleaded that the qualifications prescribed under the 1978 Rules for direct recruitment of Nurse are also applicable in the matter of promotion from the post of Auxiliary Nurse-Midwife to the post of Nurse and as the writ petitioners do not possess the prescribed qualifications, they are not entitled to be considered for promotion.

The learned Single Judge referred to the 1978 and 1989 Rules and held that even though the writ petitioners do not possess the qualifications prescribed under the 1989 Rules, they are entitled to be promoted to the post of Nurse because by virtue of Rule 16 of the 1989 Rules, the existing employees who have not received any promotion under the 1978 Rules are eligible to be promoted to the next higher post even though they do not satisfy

the conditions of eligibility prescribed under the 1989 Rules.

Shri A.K. Jayaprakash Rao, learned counsel for the appellant assailed the order of the learned Single Judge by arguing that the same is based on misreading of the entries contained in the Schedule appended to the 1978 Rules. Learned counsel emphasized that under the 1978 Rules, a person holding the post of Auxiliary Nurse-Midwife could be promoted only if he/she possessed the qualifications prescribed for direct recruitment and argued that the learned Single Judge committed a serious error by declaring that the writ petitioners are eligible for promotion. Learned counsel further argued that the writ petitioners are not entitled to be considered for promotion under the 1989 Rules because none of them possesses the certificate in General Nursing Training of two years duration issued by an institution recognized by the State Government.

Shri V. Jagapathi, learned counsel for the respondents supported the order under challenge and argued that his clients have been rightly treated eligible for promotion to the post of Nurse because no qualification was prescribed under the 1978 Rules for promotion of Auxiliary Nurse-Midwife or Maternity Assistant and Female Nursing Orderly to the post of Nurse and they are entitled to one promotion in view of Rule 16 of the 1989 Rules irrespective of the fact that they do not possess the qualifications prescribed under those Rules.

We have given serious thought to the respective arguments. At the outset, we consider it necessary and proper to mention that in compliance of the direction given by the learned Single Judge, all the writ petitioners were promoted as Nurses some time in 1994 and six of them have retired from service while holding the higher post.

Entries 5 and 6 of the Schedule appended to the 1978 Rules and Rule 16 together with entry 4 in the category of Medical Services of 1989 Rules which have bearing on the appeal read as under:

1978 Rules:

(1)	(2)	(3)	(4)	(5)	(6)

5.	Nurse	(a) By direct recruitment (b) By promotion of Auxiliary Nurse, Midwives or Maternity Assistant and Female Nursing orderly.	*For direct recruitment:* Must have undergone a successful training for a period not less than three years on general nursing of men and women and for a period of 6 months in Midwifery training in both cases to be undergone in an institution approved by the State Government and qualifications prescribed for registration as Nurse and Maternity Assistant. OR A Diploma in general sick nursing and Midwifery from a recognized Institution.	35 years	--
6	Auxiliary Nurse Midwives	(a) By Direct recruitment (b) By promotion from Female Nursing Orderly with requisite qualifications as prescribed for direct recruitment.	*For direct recruitment:* Must have undergone Auxiliary Nurse, Midwives training in any of the Institutions approved by the A.P.State Government.	35 years	--

1989 Rules:

"16. Whenever minimum technical or non-technical qualifications are prescribed for the first time in these rules for promotion to category of post immediately next higher from the category of service in which a person is serving as on the date of coming into force of these rules he/she shall not be required to possess the qualifications newly prescribed therefore for purpose of promoting to the immediate next higher post. However, they shall be required to acquire the technical or non-technical qualification newly prescribed in these rules for promotion to the second higher post."

III. MEDICAL SERVICES

i) Hospitals and Dispensaries

4. Nurse	1. By direct recruitment		Must have under gone a successful training for a period not less than three years on general sick nursing of men and women and for period of six months in Midwifery training in both cases to be undergone in an institution approved by the State Government and qualifications prescribed for registration as Nurse and Maternity Assistant. Or A diploma in general nursing and Midwifery from a recognized Institution.

2. By promotion	2. By promotion of Auxiliary Nurse, Midwives or Maternity Assistant. (i) Must possesses a certificate in general Nursing Training for two years issued by a n institution recognized by the State Government. (ii) Must have undergone not less than 5 years of service.

A reading of the plain language of the entries contained in the Schedule appended to the 1978 Rules makes it clear that the rule making authority had designedly prescribed qualifications only for appointment to the post of Nurse by direct recruitment and not by promotion. If it was intended that a person holding the post of Auxiliary Nurse-Midwife or Maternity Assistant and Female Nursing Orderly can be promoted as Nurse only on fulfilling the qualifications prescribed for direct recruitment, then a specific provision to that effect would have been made in the Rules. However, the fact of the matter is that not only for the post of Nurse, but also for various other posts i.e. Chief Accounts Officer, L.D. Steno, Head Shroff, Shroff cadre, Record Assistant, Assistant Engineer, Draughtsman Grade-II, Senior Medical Officer, etcetera, no qualification was prescribed for appointment by promotion. It is thus evident that the respondents were eligible to be promoted as Nurse under the 1978 Rules notwithstanding the fact that they did not possess the qualifications prescribed for direct recruitment.

No doubt, the respondents were not having the qualifications prescribed under the 1989 Rules, they had to be treated eligible for promotion to the post of Nurse by virtue of Rule 16. That rule clearly lays down that wherever minimum technical or non-technical qualifications are prescribed for the first time in these Rules i.e. 1989 Rules for promotion to category or post immediately next higher from the category or service in which a person is serving on the commencement of the Rules, he/she shall not be required to possess the newly prescribed qualifications, though for next promotion, they are required to acquire the prescribed technical or non-technical qualifications.

Undisputedly, the promotion from the post of Auxiliary Nurse-Midwife to the post of Nurse is first in the channel of promotions insofar as the

respondents are concerned. Therefore, the view taken by the learned Single Judge that they are eligible and entitled to be promoted as Nurses cannot be faulted, and we do not see any valid reason to interfere with the direction given by him.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

20th July, 2007

C.V.NAGARJUNA REDDY, J

kvni